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UNITED STATES COURT OF APPEALS

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FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790

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Western (Erie) Clerk of District Court
(District)Date 6/27/05In Re: Sayadi-Takhtehkar v. USA
(Caption)C.A. Nos. 04-2862Hamid Reza Sayadi-Takhtehkar

(Appellant)

Civil Nos. 01-cv-00276

(D.C. No.)

Enclosures:

6/27/05 Certified copy of C. of A. Order by the Court/Clerk
(Date) X Record (**Rec'd**) X Supplemental Record (**First**) Exhibits State Court Record X Copy of this form to acknowledge receipt and return to C. of A. Record not returned at this time until appeal(s) closed at No.(s) _____ Please forward Record to this office. The certified copy of order issued as the mandate on _____ is recalled.

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Appeals (Record)

CPS-191

March 31, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **04-2862**

HAMID REZA SAYADI-TAKHTEHKAR

v.

UNITED STATES of AMERICA, et al.

(W.D. Pa. Civ. No. 01-cv-00276)

Present: ALITO, McKEE and AMBRO, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) By the Clerk is the within appeal for possible summary action pursuant to 3rd Circuit Local Appellate Rule 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures;
- (3) Appellant's motion for appointment of counsel;
- (4) Appellees' motion to dismiss; and
- (5) Appellant's opposition to possible summary action,

in the above-captioned case.

Respectfully,

Clerk

MMW/BNB/as/crg

(Continued)

Page 2 - Continued

C.A. No. **04-2862**

HAMID REZA SAYADI-TAKHTEHKAR

v.

UNITED STATES of AMERICA, et al.

ORDER

This Court may hear appeals only if they are timely filed. A notice of appeal in a civil case in which the United States is a party is timely if it is filed within sixty days of the date of entry of the judgment or order appealed. Fed. R. App. P. 4(a)(1)(B). The time periods prescribed for filing a notice of appeal are "mandatory and jurisdictional." Browder v. Director of Dep't of Corrections, 434 U.S. 257, 264 (1978). The sixty-day time period for filing a notice of appeal began to run when the District Court entered its order denying Appellant's petition for writ of habeas corpus on July 25, 2003. Appellant's notice of appeal was not filed until June 15, 2004, see Houston v. Lack, 487 U.S. 266, 276 (1988), more than sixty days after entry of the District Court's order. On July 29, 2004, Appellant filed a motion to reopen the time to appeal pursuant to Fed. R. App. P. 4(a)(6). The District Court was without authority to grant that motion because it was filed more than 180 days after the District Court entered its order of dismissal on July 25, 2003. See Marcangelo v. Boardwalk Regency, 47 F.3d 88, 90-91 (3d Cir. 1995). Because the notice of appeal was filed outside the time period prescribed for filing a notice of appeal, the appellees' motion to dismiss for lack of jurisdiction is granted, and the appeal is dismissed. Appellant's motion for appointment of counsel is denied.

By the Court,

/s/ Theodore A. McKee
Circuit Judge

Dated: June 27, 2005

CRG/cc: Mr. Hamid Reza Sayadi-Takhtehkar
Laura S. Irwin, Esq.



A True Copy

Marcia M. Waldron

Marcia M. Waldron, Clerk